

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO. 9741 OF 2004

Mohammed Shariff s/o Mohammed
Shariff Petitioner.

versus

Devnarayan B. Tiwari Respondents.

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Shri R.M. Purandhare with O.P.Pandya for the
petitioner.
Shri D.C. Mulaji for the Respondent.

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CORAM ; R.M.S. KHANDEPARKAR, J.

DATED; 20TH DECEMBER, 2004.

P.C.;

1. Heard.

2. The decree for eviction against the original tenant was sought to be objected to by the petitioner by taking out Obstructionist proceeding on the ground that the leasehold rights were assigned to the petitioner by the assignee or the original tenant in the year 1986 and since then the obstructionist is in possession of the suit premises. It was also sought to be contended that the respondent-land lord has accepted the rent from the petitioner for three months, i.e. for the months of June, July and August 1996. The courts below taking into consideration the fact that the petitioner

had already filed the suit for declaration in relation to his rights into the suit property, and having failed therein, rejected the claim of the petitioner. It is also observed by the courts below that the petitioner did not succeed in the injunction notice No. 6075/97 which was taken out in the said declarative suit. Obviously, the issue relating to the claim of the petitioner stood concluded by the dismissal of the declaratory suit filed by the petitioner and it was not permissible, as rightly held by the courts below, to re-open the said issue under the guise of obstructionist proceedings. Being so, there is no illegality committed by the courts below in rejecting the claim of the petitioner and discharging the notice of obstructionist in the matter.

3. In the circumstances, there is no case made out for interference in the impugned order in exercise of writ jurisdiction under Article 227 of the Constitution.

Hence petition is rejected.
